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EARTHJUSTICE

S. L. L. L.

October 14, 2022

BY CERTIFIED MAIL

Dale Irwin
President & Plant Manager
Greenidge Generation LLC
590 Plant Road
Dreden, New York 14441-0187

Michael Regan, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Lisa F. Garcia, Regional Administrator
U.S. Environmental Protection Agency Region 2
290 Broadway
New York, NY 10007

Basil Seggos, Commissioner
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1010

Re: 60-Day Notice of Intent to File Citizen Suit Under Clean Water Act Section 505(a)(1) for Greenidge Generation, LLC's Violations of Clean Water Act at the Greenidge Generation Station in Dresden, New York

To Whom it May Concern:

In accordance with Section 505 of the Clean Water Act ("the Act"), 33 U.S.C. § 1365, and 40 C.F.R. Part 135, Seneca Lake Guardian hereby notifies you that Greenidge Generation, LLC ("Greenidge" or "the company") has violated and continues to violate "effluent standard[s] or limitation[s]" under Section 505(a)(1)(A) & (f) of the Act by discharging pollutants at the Greenidge Generation Station, DEC ID: 8573600004, ("the Facility") in Dresden, New York without authorization in a State Pollutant Discharge Elimination System ("SPDES") permit. The Facility's SPDES Permit, NY001325, has expired and Greenidge has failed to submit a complete application for a new permit. Further, Greenidge is violating an express condition of its permit by operating without control technology mandated by the New York Department of Environmental Conservation ("DEC"). If, within sixty days of the postmark of this letter, you do

not bring your Facility into full compliance with the Act, we intend to file a citizen suit seeking civil penalties for your ongoing violations and an injunction compelling you to comply with the Act.

1. Background

Greenidge Generation Station is a once-through-cooling power plant used for cryptocurrency mining. The Facility discharges into Seneca Lake, a gem in the Finger Lakes, which is popular for swimming, boating, and fishing. The mesotrophic lake has seen its water quality suffer over the past few decades, and significant discharges of pollutants into the water body are therefore a matter of public concern.

The Facility began operating as a coal fired power plant in the 1930's but stopped operating as such in 2011 when the owner declared bankruptcy. The Facility was acquired by the company with backing from a private equity firm in 2014. Afterward, Greenidge sought renewal of the Facility's SPDES permit from DEC. In 2017, DEC issued a renewed SPDES permit for the power plant to operate as a gas-fired power plant serving as a "peaker"—a type of power plant that operates only intermittently in order to shore up the reliability of the electrical grid. The 2017 permit was modified in 2019 ("2019 Permit" attached as "Exhibit A"). The 2019 Permit expired on September 30, 2022.

2. Clean Water Act Violations

The Facility is presently discharging into Seneca Lake without a new permit. Upon information and belief, the Facility will continue discharging. As a result, Greenidge is in violation of Clean Water Act Section 301(a), 33 U.S.C. § 1311(a). Greenidge failed to timely renew its 2019 Permit, which expired on September 30, 2022. In fact, Greenidge never submitted a complete application to DEC sufficient to trigger administrative continuance of its 2019 SPDES Permit after the permit's expiration date.

An enforcement action is also warranted because the company violated a condition contained within the SPDES Permit NY001325. Specifically, Greenidge has failed to install cylindrical wedge wire intake screens onto the Facility by the October 1, 2022 deadline required by the 2019 Permit.

a. Greenidge is in Violation of Clean Water Act Section 301(a) Because the Facility is Discharging into Seneca Lake Without a Valid SPDES Permit.

Greenidge's SPDES Permit expired on September 30, 2022, and with it so did the Facility's permission to discharge into Seneca Lake. Greenidge applied for a renewal of the permit on January 12, 2022, indicating that it was seeking a thermal variance. However, Greenidge completed a short SPDES permit renewal application ("Exhibit B") comprising seven pages, and only including a few sentences worth of information about the Facility. According to binding federal regulations, the terse application submitted by Greenidge to DEC for renewal of SPDES Permit NY001325 is incomplete. Therefore, Greenidge is discharging into Seneca Lake without a permit.

i. Greenidge's application is incomplete because it lacks required information for facilities with cooling water intake structures.

Greenidge failed to supply legally-required information about its cooling water intake structure as a part of its renewal application. Federal regulations require an "owner or operator of [such an existing] facility... whose currently effective permit expires after July 14, 2018," to submit "the information required in the applicable provisions of 40 CFR 122.21(r) when applying for a subsequent permit." 40 C.F.R. §122.95(a). This provision covers applications submitted for state delegated programs. *See also id* § 123.25(a)(4), (a)(36). Greenidge simply ignored this regulation.

ii. Greenidge's application is incomplete because it lacks required information regarding its major operational change from peaker plant to Cryptomining Facility.

EPA, in its 2019 Region 2 NPDES Program and Permit Review stated that "[i]n order to comply with federal regulations regarding the timeliness of renewal applications (40 CFR §122.21(d)(1)) and complete applications (40 CFR §122.21(e)),... DEC should ensure that a complete application, rather than a short application form, is submitted by the permittee prior to the administrative continuance of any permit." *See* Exhibit D at 15-16 (describing compliance with these federal regulations as an "Essential" action item that DEC "must" ensure is implemented). In order to provide reviewers of a SPDES application with insight into the nature of operations the operations of a prospective discharging facility, an applicant is required to include information in its application pertaining to "[t]he activities conducted... which require it to obtain an NPDES permit" and "[a] brief description of the nature of the business," as well as "[u]p to four SIC and up to four NAICS codes that best reflect the principal products or services provided by the facility." *See* 40 CFR § 122.21(f)(1), (3), (8).

Greenidge's application is incomplete because it lacks an up-to-date description of activities conducted at the Facility and the nature of its business. Greenidge's application made no mention of the fact that the Facility underwent a major operational change after DEC granted Greenidge a permit modification in 2019. Specifically, in 2020, Greenidge repurposed the Facility so that it would facilitate cryptocurrency mining operating 24 hours a day, 7 days a week, instead of just operating intermittently as a peaker plant for purposes of grid reliability. This major operational change has greatly exacerbated the environmental impacts of the Facility on Seneca Lake. The power plant withdraws large volumes of water from Seneca Lake into a cooling water intake structure, and discharges over one hundred million gallons of heated effluent and other pollutants into the lake daily.

b. Greenidge is Violating a Condition of SPDES Permit NY001325 to Install DEC-Mandated Control Technology onto the Facility.

Greenidge failed to comply with an important condition contained within SPDES Permit NY001325. *See* 40 CFR § 122.41(a) ("The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds

for enforcement action.”). SPDES Permit NY001325 gave Greenidge until October 1, 2022 to install cylindrical wedge wire intake screens onto its Facility. Exhibit A at 15-16. DEC required the installation of the intake screens as a means of compliance with a best available control technology finding made by the state agency. Exhibit A at 13-15. The intake screens were supposed to mitigate the impingement and entrainment of aquatic life by the Facility. DEC opted to allow Greenidge to install intake screens onto the Facility rather than an even more protective control technology, closed cycle cooling, in part, because installation of intake screens would be more easily achievable by the company. *Id.* Although Greenidge had a more-than-sufficient five years to meet this deadline, the company failed to do so.

DEC has rewarded the company with a generous, but illegal, extension on the deadline to install the intake screens. Exhibit E at 2. DEC lacks authority under state regulations to issue “minor modifications” of permits. *See* NYCRR §§ 750-1.14(e); 750-1.18. Instead, DEC cites to 40 CFR § 122.63 as authority for this “minor modification” of the installation deadline. Yet, this federal regulation is not on the 40 C.F.R. § 123.25 list of regulations applicable to state delegated programs. Furthermore, 40 CFR § 122.63 bars DEC from issuing such an extension where doing so would “interfere with attainment of the final compliance date requirement” in a SPDES Permit. 40 CFR § 122.63(c). DEC alleges that the installation deadline of October 1, 2022 was merely an “interim milestone.” Exhibit E at 2. Yet, this assertion is belied by the express terms of SPDES Permit NY001325, which states “[n]otwithstanding any extensions that may be granted by the Department, the completion of installation and operation of [the Best Available Technology] shall not occur later than [October 1, 2017] + 5 years.” *See* Exhibit A at 16. The October 1, 2022 deadline was plainly a “final compliance date,” and thus, DEC’s modification of the compliance date is void and Greenidge remains out of compliance with this permit condition.

3. Identity and Address of Party Giving Notice

The party giving notice is as follows:

Seneca Lake Guardian
607-769-4639
PO Box 333
Watkins Glen NY 14891

Seneca Lake Guardian is represented by the legal counsel identified below:

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Conclusion

For the reasons stated above, Greenidge is illegally discharging into Seneca Lake. Continued discharges into the lake in the absence of a valid permit constitute a violation of Clean Water Act Section 301(a), 33 U.S.C. § 1311(a). Furthermore, Greenidge's failure to install control technology by the 2019 Permit deadline violates an express condition of the 2019 Permit. As stated above, Seneca Lake Guardian intends to file a citizen suit under Section 505(a)(1) of the Act seeking civil penalties for your ongoing violations and an injunction compelling you to comply with the Act. Seneca Lake Guardian reserves the right to seek civil penalties for any further violations of the Act stemming from the issues identified in this notice that occur after today.

If Greenidge has taken any steps to remedy the underlying cause of the violations described above, or if Greenidge believes that anything in this letter is inaccurate, please let us know. If Greenidge does not advise us of any remedial steps or inaccuracies during the 60-day period, we will assume that no such steps have been taken, that the information in this letter is accurate, and that violations are likely to continue. We would be happy to meet with Greenidge or its representatives to attempt to resolve these issues within the 60-day notice period.

Respectfully submitted,

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